

ESTTA Tracking number: **ESTTA641915**

Filing date: **12/01/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Take-Two Interactive Software, Inc.
Granted to Date of previous extension	11/30/2014
Address	662 Broadway New York, NY 10012 UNITED STATES
Attorney information	Andrea L. Calvaruso, Esq. Kelley, Drye & Warren, LLP 101 Park Avenue New York, NY 10178 UNITED STATES trademarks@kelleydrye.com, ACalvaruso@KelleyDrye.com, imaggioni@kelleydrye.com Phone:2128087800

Applicant Information

Application No	85945633	Publication date	06/03/2014
Opposition Filing Date	12/01/2014	Opposition Period Ends	11/30/2014
Applicant	Gene Simmons Company c/o Joseph Young Associates, Ltd. Pine Brook, NJ 07058 UNITED STATES		


Goods/Services Affected by Opposition

Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: CLOTHING, NAMELY, SHIRTS, PANTS, HEAD WEAR, CAPS, JACKETS, VESTS, WRIST BANDS, BELTS FOR CLOTHING, FOOTWEAR
Class 041. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Entertainment services in the nature of an ongoing television series in the field of drama and comedy; Entertainment services in the nature of an ongoing reality based television program; Providing entertainment information via electronic global communications network


Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is merely descriptive	Trademark Act section 2(e)(1)
Dilution	Trademark Act section 43(c)


Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	4037654	Application Date	12/22/2010
Registration Date	10/11/2011	Foreign Priority Date	NONE
Word Mark	ROCKSTAR GAMES		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 1999/04/01 First Use In Commerce: 1999/04/01 Animated motion picture films featuringentertainment, namely, action, adventure, dramatic, comedic, children's and documentary themes; computer and video gamesoftware, and related programs and software, namely, screensavers, digital music files, videos, films and other multimedia materials, all featuring entertainment, namely, action, adventure, dramatic,comedic, children's and documentary themes, all delivered via pre-recorded discs and other pre-recorded media and via downloadable delivery on global computer networks and wireless networks; pre-recorded discs and other pre-recorded digital and electronic media in the field of live action programs, motion pictures, oranimation featuring entertainment, namely, action, adventure, dramatic, comedic, children's and documentary themes</p> <p>Class 041. First use: First Use: 1999/04/01 First Use In Commerce: 1999/04/01 Entertainment services, namely, providing a website featuring use of non-downloadable computer and video games, and news, information, tips, hints, contests, computer interface themes and enhancements, audio-visual content, music, films, videos, television programs, animated series, and other multimedia materials, allnon-downloadable and all in the field of computer games and video games; providing information, news and commentary in the field of computer games and video games</p>		

U.S. Registration No.	3843554	Application Date	11/14/2008
Registration Date	09/07/2010	Foreign Priority Date	NONE
Word Mark	R		

Design Mark	
Description of Mark	The mark consists of a stylized "R" with a star on the right.
Goods/Services	Class 041. First use: First Use: 1999/04/30 First Use In Commerce: 1999/04/30 entertainment services, namely, providing online games, providing a website featuring computer games and video games, and news, information, tips, hints, contests, computer interface themes, enhancements, audio-visual content, music, films, videos, television programs, animated series, and other multimedia materials in the field of computer games and video games; providing information, news and commentary in the field of computer gamesand video games

U.S. Registration No.	3956407	Application Date	11/14/2008
Registration Date	05/10/2011	Foreign Priority Date	NONE
Word Mark	ROCKSTAR LOFT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1999/10/30 First Use In Commerce: 1999/10/30 Arranging and conducting special eventsand parties		
U.S. Application No.	85419485	Application Date	09/09/2011

Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ROCKSTAR STUDIOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 0 First Use In Commerce: 0 Computer and video game programs and software; downloadable computer and video game programs and software; downloadable digital materials, namely, ring tones, wallpapers, screensavers, digital music files, and graphics, videos, films, multimedia files, and animated films in the field of video games and computer games, all delivered via global computer networks and wireless networks; pre-recorded digital media featuring computer games and video games, ring tones, wallpapers, screensavers, digital music files, and graphics, videos, films, multimedia files, and animated films in the field of video games and computer games; and pre-recorded video discs and other pre-recorded digital and electronic media in the field of live action programs, motion pictures, or animation featuring entertainment, namely, action, adventure, dramatic, comedic, children's and documentary themes</p> <p>Class 016. First use: First Use: 0 First Use In Commerce: 0 Printed materials, namely, books, pamphlets, periodicals, magazines, and manuals in the field of video games; posters</p> <p>Class 025. First use: First Use: 0 First Use In Commerce: 0 Clothing, namely, shirts, t-shirts, sweatshirts, jackets, and headgear, namely, hats and caps, and footwear</p> <p>Class 041. First use: First Use: 0 First Use In Commerce: 0 Entertainment services, namely, providing online games; providing a website featuring non-downloadable computer and video games, news, information, films, animated films, and other multimedia materials in the field of computer games and video games; providing information, news and commentary in the field of computer games and video games; animated motion picture films featuring entertainment, namely, action, adventure, dramatic, comedic, children's and documentary themes</p>		

U.S. Registration No.	2456387	Application Date	11/15/1999
Registration Date	05/29/2001	Foreign Priority Date	NONE
Word Mark	ROCKSTAR GAMES		

Design Mark	ROCKSTAR GAMES
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 1999/04/01 First Use In Commerce: 1999/04/01 COMPUTER GAMES SOFTWARE AND VIDEO GAME PROGRAMS

U.S. Registration No.	2855543	Application Date	05/14/2002
Registration Date	06/22/2004	Foreign Priority Date	NONE


Word Mark	R ROCKSTAR GAMES
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Design Mark	
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Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 1999/04/01 First Use In Commerce: 1999/04/01 Computer game software and video game programs

U.S. Registration No.	3956411	Application Date	12/05/2008
Registration Date	05/10/2011	Foreign Priority Date	NONE

Word Mark	R EST. 1998 ROCKSTAR WAREHOUSE
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Design Mark	
Description of Mark	The mark consists of the wording "ROCKSTAR WAREHOUSE" overlaying a rectangular strip inside a rectangular background. To the left of the wording, breaking up the rectangular strip, is a design element of a double gryphon with a crown above and the wording "EST. 1998" below. At the center of the double gryphon is the letter "R" and a five point star at the bottom right of the "R".
Goods/Services	Class 035. First use: First Use: 2001/08/08 First Use In Commerce: 2001/08/08 online retail store services featuring computer games, DVDs, posters, printed publications, bags, toys and apparel, namely, shirts, t-shirts, sweatshirts, casual and leisure jackets, and headgear, namely, hats and caps


U.S. Application No.	77715935	Application Date	04/17/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ROCKSTAR		
Design Mark			
Description of Mark	The mark consists of the word "ROCKSTAR" with a star connected to the bottom right of the final R.		
Goods/Services	Class 025. First use: First Use: 2001/10/01 First Use In Commerce: 2001/10/01 clothing, namely, shirts, t-shirts, sweatshirts, casual and leisure jackets; headgear, namely, caps		

U.S. Application No.	77142681	Application Date	03/28/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ROCKSTAR		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 025. First use: First Use: 2001/08/21 First Use In Commerce: 2001/08/21 Clothing, namely, shirts, t-shirts, sweatshirts, casual and leisure jackets; headgear, namely, hats and caps

U.S. Application No.	78886446	Application Date	05/18/2006
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	ROCKSTAR WAREHOUSE
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Design Mark	 <p>ROCKSTAR WAREHOUSE</p>
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Description of Mark	NONE
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Goods/Services	Class 035. First use: First Use: 2001/08/08 First Use In Commerce: 2001/08/08 online retail store services featuring computer games, dvds, and apparel, namely shirts, t-shirts, sweatshirts, casual and leisure jackets; headgear, namely hats and caps.
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U.S. Registration No.	2391635	Application Date	11/15/1999
Registration Date	10/03/2000	Foreign Priority Date	NONE

Word Mark	R
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 009. First use: First Use: 1999/04/01 First Use In Commerce: 1999/04/01
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		COMPUTER GAMES SOFTWARE AND VIDEO GAME PROGRAMS	
U.S. Registration No.	3351855	Application Date	05/04/2007
Registration Date	12/11/2007	Foreign Priority Date	NONE
Word Mark	R		
Design Mark			
Description of Mark	The mark consists of a stylized R with a star on the right.		
Goods/Services	Class 009. First use: First Use: 1999/10/31 First Use In Commerce: 1999/10/31 Entertainment software, namely, game discs and downloadable game software for use with personal computers, video game consoles, hand held gaming devices		

U.S. Registration No.	3631311	Application Date	11/18/2008
Registration Date	06/02/2009	Foreign Priority Date	NONE
Word Mark	R		


Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2001/08/21 First Use In Commerce: 2001/08/21 Men, women and children's clothing, namely, shirts, t-shirts, sweatshirts, casual and leisure jackets; headgear, namely, hats and caps		


U.S. Registration No.	3619405	Application Date	11/18/2008
Registration Date	05/12/2009	Foreign Priority Date	NONE
Word Mark	R		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2006/12/13 First Use In Commerce: 2006/12/13 Downloadable music, ringtones, graphics, and wallpaper via the Internet and mobile devices Class 035. First use: First Use: 2006/12/13 First Use In Commerce: 2006/12/13 On-line retail store services featuring downloadable sound, music, image, video and game files

U.S. Registration No.	3616037	Application Date	12/18/2008
Registration Date	05/05/2009	Foreign Priority Date	NONE
Word Mark	R		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1999/11/09 First Use In Commerce: 1999/11/09 printed matter, namely books, pamphlets, strategy guides and manuals in the field of video games; posters; stickers		

U.S. Registration No.	3695041	Application Date	11/18/2008
Registration Date	10/13/2009	Foreign Priority Date	NONE
Word Mark	R		


Design Mark	
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 1999/10/30 First Use In Commerce: 1999/10/30 Arranging and conducting special events and parties

U.S. Registration No.	3950918	Application Date	09/02/2010
Registration Date	04/26/2011	Foreign Priority Date	NONE
Word Mark	R		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 009. First use: First Use: 2000/11/28 First Use In Commerce: 2000/11/28 sound recordings featuring music and digital music downloadable from the Internet and wireless devices		
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U.S. Registration No.	3992563	Application Date	09/02/2010
Registration Date	07/12/2011	Foreign Priority Date	NONE

Word Mark	R		
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Design Mark			
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Description of Mark	NONE		
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Goods/Services	Class 041. First use: First Use: 1999/11/17 First Use In Commerce: 1999/11/17 Entertainment services, namely, providing on-line prerecorded nondownloadable, music, films, and movies via a global computer network		
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U.S. Registration No.	4034074	Application Date	12/22/2010
Registration Date	10/04/2011	Foreign Priority Date	NONE

Word Mark	R		
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Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 2010/10/19 First Use In Commerce: 2010/10/19 Animated motion picture films featuringentertainment, namely, action, adventure, dramatic, comedic, children's and documentary themes; computer and video gameprograms and software, and related programs and software, namely, screensavers,digital music files, videos, films and other multimedia materials, all featuring entertainment, namely, action, adventure, dramatic, comedic, children's and documentary themes, all delivered via pre-recorded discs and other pre-recorded media and via downloadable delivery on global computer networks and wireless networks; pre-recorded discs and other pre-recorded digital and electronic media in the field of live action programs, motionpictures, or animation featuring entertainment, namely, action, adventure, dramatic, comedic, children's and documentary themes</p> <p>Class 041. First use: First Use: 1999/04/30 First Use In Commerce: 1999/04/30 Entertainment services, namely, providing online computer and video games, providing a website featuring use of non-downloadable computer and video games, and news, information, tips, hints, contests, computer interface themes and enhancements, audio-visual content, music, films, videos, television programs, animated series, and other multimedia materials, all non-downloadable and all in the field of computer games and video games; providing information, news and commentary in the field of computer games and videogames</p>		
U.S. Registration No.	4216755	Application Date	11/17/2011
Registration Date	10/02/2012	Foreign Priority Date	NONE
Word Mark	R		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 028. First use: First Use: 2003/10/31 First Use In Commerce: 2003/10/31 Games, toys, and playthings, namely, dolls, toy action figures and accessories therefor

Attachments	85204403#TMSN.png(bytes) 77614900#TMSN.png(bytes) 77614814#TMSN.png(bytes) 85419485#TMSN.png(bytes) 75835088#TMSN.png(bytes) 76408131#TMSN.png(bytes) 77627445#TMSN.png(bytes) 77715935#TMSN.png(bytes) 77142681#TMSN.png(bytes) 78886446#TMSN.png(bytes) 75835094#TMSN.png(bytes) 77173249#TMSN.png(bytes) 77616894#TMSN.png(bytes) 77616897#TMSN.png(bytes) 77636344#TMSN.png(bytes) 77616981#TMSN.png(bytes) 85122037#TMSN.png(bytes) 85122117#TMSN.png(bytes) 85204405#TMSN.png(bytes) 85475008#TMSN.png(bytes) Notice of Opposition ROCK STAR POKER.pdf(38634 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Ilaria Maggioni/
Name	Ilaria Maggioni
Date	12/01/2014

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**IN THE MATTER OF TRADEMARK APPLICATION
SERIAL NO. 85/945,633 PUBLISHED IN THE
OFFICIAL GAZETTE ON June 3, 2014
MARK: ROCK STAR POKER**

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TAKE-TWO INTERACTIVE	:	
SOFTWARE, INC.,	:	
	:	
Opposer,	:	
	:	
v.	:	<u>OPPOSITION NO.</u>
	:	
GENE SIMMONS COMPANY,	:	
	:	
	:	
Applicant.	:	
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NOTICE OF OPPOSITION

Take-Two Interactive Software, Inc. (“Opposer”) is a corporation organized under the laws of Delaware with a principal place of business at 622 Broadway, New York, New York 10012. Opposer believes its trademark and/or service mark rights will be damaged by the registration of the mark ROCK STAR POKER (“Applicant’s Mark”) by Applicant Gene Simmons Company (“Applicant”) for “Clothing, namely, shirts, pants, head wear, caps, jackets, vests, wrist bands, belts for clothing, footwear” in International Class 25, and “Entertainment services in the nature of an ongoing television series in the field of drama and comedy; Entertainment services in the nature of an ongoing reality based television program; Providing entertainment information via electronic global communications network” in International Class

41¹ (“Applicant’s Goods and Services”) covered by the above-identified application (the “Application”) and having been granted a first extension of time to oppose up to and including October 1, 2014, and a further extension of time to oppose, with Applicant’s consent, up to and including November 30, 2014, hereby opposes the same.

The grounds for opposition are as follows:

1. Opposer is a leading developer, marketer and publisher of interactive entertainment software and accessories, including video and computer games and online interactive video games, interactive video and online entertainment services and a wide array of related goods and services, including but not limited to clothing and apparel (collectively, “Opposer’s Goods and Services”). Opposer’s Goods and Services are marketed and sold to consumers throughout the world.

2. As set forth in detail below, Opposer, through its affiliated companies, offers such goods and services under trade names, trademarks and service marks comprising or containing the term ROCKSTAR and/or the letter “R” combined with a star design, used alone or with other words or designs (collectively, “Opposer’s ROCKSTAR Marks”). The iteration of Opposer’s ROCKSTAR Marks combining an R and a star design (the “R & Star Design Mark”) denotes and is understood by consumers to stand for the word “Rockstar”:

¹ Opposer brings to the Office’s attention that, according to the online record of the USPTO, while Applicant’s specification in class 41 was subject to a final refusal by Office Action dated February 10, 2014, it seems that by clerical mistake the class 41 specification was nevertheless approved for publication on April 14, 2014, and subsequently class 41 was included in the Notice of Publication as part of the Application as published on June 3, 2014. Opposer, therefore, opposes the same by this Notice of Opposition since it forms part of the published record for this Application. Opposer expressly reserves the right to supplement this Notice of Opposition should the Office or the Applicant supplement the file history and record of the Application with documents or entries that do not currently appear as being of record from inspection of the online database of the Trademark Office as of the date of filing hereto.



3. Take-Two is the parent company of the world famous video game developer Rockstar Games, Inc. (“Rockstar”). Rockstar has conducted business under the ROCKSTAR house mark since 1998, long prior to the filing date of the application herein opposed. Rockstar uses the ROCKSTAR house mark in conjunction with other words for a variety of goods and services. For example, Rockstar offers software users the opportunity to purchase the ROCKSTAR PASS subscription software package, entitling them to download all add-on content for each game. Similarly, Rockstar offers extensive social networking and data services to its software users and website visitors under the ROCKSTAR GAMES SOCIAL CLUB mark. Rockstar also sells ROCKSTAR and R & Star branded goods (including clothing) through the ROCKSTAR WAREHOUSE website. Rockstar marks all of its software with the ROCKSTAR GAMES mark and each of its subsidiary development studios uses ROCKSTAR as a formative mark including Rockstar North, Rockstar London, Rockstar Leeds, Rockstar Lincoln, Rockstar San Diego, Rockstar Toronto and Rockstar New England. In addition to those listed above, Rockstar also uses the ROCKSTAR house mark for numerous other products and services, including ROCKSTAR FILMS (television and movie production) and ROCKSTAR LOFT (entertainment events).

4. Beginning in 1999, Opposer, through its Rockstar subsidiary, has used Opposer’s ROCKSTAR Marks to designate its world famous entertainment software, computer and video games, and related products and services. These products marketed in connection with Opposer’s ROCKSTAR Marks include some of the best-selling video games in the world, including the GRAND THEFT AUTO, RED DEAD, MIDNIGHT CLUB, and MAX PAYNE

series of video games. The GRAND THEFT AUTO series of games alone have collectively sold well over 160 million copies, and Rockstar is one of the best recognized and most successful game developers in the world. *Grand Theft Auto V* grossed over \$1 billion in retail sales in only three days after its September 2013 release. As an example of how popular Rockstar is -- and how well known Opposer's ROCKSTAR Marks are -- a Google search for the words ROCKSTAR and GAMES performed on November 26, 2014 resulted in 34,400,000 hits.

5. Since adopting Opposer's ROCKSTAR Marks, Opposer has expanded use of such marks to a broad variety of products and services, including without limitation, clothing, including but not limited to jackets, hats, sweaters, hooded sweatshirts, t-shirts, and retail services featuring clothing; television programs; websites featuring news, information, animated films and other multimedia materials; animated motion picture films; special events and parties; magazines; manuals; guides; periodicals; books; pre-recorded video discs; prerecorded digital music files and sound recordings; retail services featuring music; online streaming of music; music publishing services; providing downloadable music, ringtones, graphics, and wallpaper for mobile phones; on-line retail store services; downloadable image, video and game files.

6. Opposer also operates an online store designated ROCKSTAR WAREHOUSE. Through this store, located at www.rockstarwarehouse.com, Opposer sells and distributes promotional products bearing Opposer's ROCKSTAR Marks.

7. Opposer first began using Opposer's ROCKSTAR Marks in connection with clothing in 2001.

8. Opposer first began using Opposer's ROCKSTAR Marks in connection with entertainment services including but not limited to those in the nature of providing a website featuring news, information, animated films and other multimedia materials, and arranging and

conducting special events and parties, at least as early as 1999; and in connection with television programs and animated motion picture films, at least as early as 2010.

9. Opposer has continuously and prominently used Opposer's ROCKSTAR Marks since their adoption. Opposer has extensively advertised and promoted Opposer's ROCKSTAR Marks in connection with the many goods and services described above, and has achieved significant sales, exposure and recognition of the above described goods and services bearing or used in connection with Opposer's ROCKSTAR Marks.

10. By virtue of Opposer's longstanding use, advertisement and promotion of Opposer's ROCKSTAR Marks and the goods and services they designate, these marks have developed enormous goodwill in the trade and among consumers and have become famous and associated in the mind of the public with Opposer's well-known products and services.

11. Opposer owns numerous federal trademark registrations and applications for Opposer's ROCKSTAR Marks, including without limitation:

- A. Registration No. 4,037,654 for ROCKSTAR GAMES for "animated motion picture films featuring entertainment, namely, action, adventure, dramatic, comedic, children's and documentary themes; computer and video game software, and related programs and software, namely, screensavers, digital music files, videos, films and other multimedia materials, all featuring entertainment, namely, action, adventure, dramatic, comedic, children's and documentary themes, all delivered via pre-recorded discs and other pre-recorded media and via downloadable delivery on global computer networks and wireless networks; pre-recorded discs and other pre-recorded digital and electronic media in the field of live action programs, motion pictures, or animation featuring entertainment, namely, action, adventure, dramatic, comedic, children's and documentary themes" (class 9); and "entertainment services, namely, providing a website featuring use of non-downloadable computer and video games, and news, information, tips, hints, contests, computer interface themes and enhancements, audio-visual content, music, films, videos, television programs, animated series, and other multimedia materials, all non-downloadable and all in the field of computer games and video games; providing information, news and commentary in the field of

computer games and video games” (class 41), which issued October 11, 2011;

- B. Registration No. 3,843,554 for the R & Star Design Mark for “entertainment services, namely, providing online games, providing a website featuring computer games and video games, and news, information, tips, hints, contests, computer interface themes, enhancements, audio-visual content, music, films, videos, television programs, animated series, and other multimedia materials in the field of computer games and video games; providing information, news and commentary in the field of computer games and video games” (class 41), which issued September 7, 2010;
- C. Registration No. 3,956,407 for ROCKSTAR LOFT for “arranging and conducting special events and parties” (class 41), which issued on May 10, 2011;
- D. Application No. 85/419,485 for ROCKSTAR STUDIOS for “computer and video game programs and software; downloadable computer and video game programs and software; downloadable digital materials, namely, ring tones, wallpapers, screensavers, digital music files, and graphics, videos, films, multimedia files, and animated films in the field of video games and computer games, all delivered via global computer networks and wireless networks; pre-recorded digital media featuring computer games and video games, ring tones, wallpapers, screensavers, digital music files, and graphics, videos, films, multimedia files, and animated films in the field of video games and computer games; and pre-recorded video discs and other pre-recorded digital and electronic media in the field of live action programs, motion pictures, or animation featuring entertainment, namely, action, adventure, dramatic, comedic, children's and documentary themes” (class 9); “printed materials, namely, books, pamphlets, periodicals, magazines, and manuals in the field of video games; posters” (class 16); “clothing, namely, shirts, t-shirts, sweatshirts, jackets, and headgear, namely, hats and caps, and footwear” (class 25); and “entertainment services, namely, providing online games; providing a website featuring non-downloadable computer and video games, news, information, films, animated films, and other multimedia materials in the field of computer games and video games; providing information, news and commentary in the field of computer games and video games; animated motion picture films featuring entertainment, namely, action, adventure, dramatic, comedic, children's and documentary themes” (class 41), which was filed on September 9, 2011;
- E. Registration No. 2,456,387 for ROCKSTAR GAMES for “computer games software and video game programs” (class 9), which issued May 29, 2001, and has achieved incontestable status;

- F. Registration No. 2,855,543 for R ROCKSTAR GAMES and Design for “computer game software and video game programs” (class 9), which issued June 22, 2004, and has achieved incontestable status;
- G. Registration No. 3,956,411 for ROCKSTAR WAREHOUSE and Design for “online retail store services featuring computer games, DVDs, posters, printed publications, bags, toys and apparel, namely, shirts, t-shirts, sweatshirts, casual and leisure jackets, and headgear, namely, hats and caps” (class 35), which issued on May 10, 2011;
- H. Application No. 77/715,935 for the ROCKSTAR and Design Mark for “clothing, namely, shirts, t-shirts, sweatshirts, casual and leisure jackets; headgear, namely, caps” (class 25), which was filed on April 17, 2009;
- I. Application No. 77/142,681 for ROCKSTAR for “clothing, namely, shirts, t-shirts, sweatshirts, casual and leisure jackets; headgear, namely, hats and caps” (class 25), which was filed on March 28, 2007;
- J. Application No. 78/886,446 for ROCKSTAR WAREHOUSE for “online retail store services featuring computer games, dvds, and apparel, namely shirts, t-shirts, sweatshirts, causal and leisure jackets; headgear, namely hats and caps” (class 35), which was filed on May 18, 2006;
- K. Registration No. 2,391,635 for the R & Star Design Mark for “computer game software and video game programs” (class 9), which issued October 3, 2000;
- L. Registration No. 3,351,855 for the R & Star Design Mark for “entertainment software, namely, game discs and downloadable game software for use with personal computers, video game consoles, hand held gaming devices” (class 9), which issued December 11, 2007;
- M. Registration No. 3,631,311 for the R & Star Design Mark for “men, women and children's clothing, namely, shirts, t-shirts, sweatshirts, casual and leisure jackets; headgear, namely, hats and caps” (class 25), which issued June 2, 2009;
- N. Registration No. 3,619,405 for the R & Star Design Mark for “downloadable music, ringtones, graphics, and wallpaper via the Internet and mobile devices” (class 9); and “on-line retail store services featuring downloadable sound, music, image, video and game files” (class 35), which issued May 12, 2009;
- O. Registration No. 3,616,037 for the R & Star Design Mark for “printed matter, namely books, pamphlets, strategy guides and manuals in the field of video games; posters; stickers” (class 16), which issued May 5, 2009;

- P. Registration No. 3,695,041 for the R & Star Design Mark for “arranging and conducting special events and parties” (class 41), which issued October 13, 2009;
- Q. Registration No. 3,950,918 for the R & Star Design Mark for “sound recordings featuring music and digital music downloadable from the Internet and wireless devices” (class 9), which issued April 26, 2011;
- R. Registration No. 3,992,563 for the R & Star Design Mark for “entertainment services, namely, providing on-line prerecorded nondownloadable, music, films, and movies via a global computer network” (class 41), which issued July 12, 2011;
- S. Registration No. 4,034,074 for the R & Star Design Mark for “animated motion picture films featuring entertainment, namely, action, adventure, dramatic, comedic, children's and documentary themes; computer and video game programs and software, and related programs and software, namely, screensavers, digital music files, videos, films and other multimedia materials, all featuring entertainment, namely, action, adventure, dramatic, comedic, children's and documentary themes, all delivered via pre-recorded discs and other pre-recorded media and via downloadable delivery on global computer networks and wireless networks; pre-recorded discs and other pre-recorded digital and electronic media in the field of live action programs, motion pictures, or animation featuring entertainment, namely, action, adventure, dramatic, comedic, children's and documentary themes” (class 9); and “entertainment services, namely, providing online computer and video games, providing a website featuring use of non-downloadable computer and video games, and news, information, tips, hints, contests, computer interface themes and enhancements, audio-visual content, music, films, videos, television programs, animated series, and other multimedia materials, all non-downloadable and all in the field of computer games and video games; providing information, news and commentary in the field of computer games and video games” (class 41), which issued on October 4, 2011.
- T. Registration No. 4,216,755 for the R & Star Design Mark for “games, toys, and playthings, namely, dolls, toy action figures and accessories therefor” (class 28), which issued on October 2, 2012.

12. The above applications and registrations are valid and subsisting, and are in full force and effect and are owned by Opposer.

13. On May 29, 2013, Applicant Gene Simmons Company filed Application Serial No. 85/945,633 based on its alleged intent to use the mark ROCK STAR POKER for “Clothing,

namely, shirts, pants, head wear, caps, jackets, vests, wrist bands, belts for clothing, footwear” in International Class 25, and “Entertainment services in the nature of an ongoing television series in the field of drama and comedy; Entertainment services in the nature of an ongoing reality based television program; Providing entertainment information via electronic global communications network” in International Class 41.

14. The Application was approved for publication on April 14, 2014 and published for opposition on June 3, 2014 in classes 25 and 41, on an Intent-to-Use basis.

15. Upon information and belief, Applicant intends to use Applicant’s Mark ROCK STAR POKER in connection with the services applied-for in class 41 for providing entertainment in the nature of a television program about poker played by famous rock musicians, including rock star musician Gene Simmons whose company is the Applicant of the instant Application.

16. By virtue of Opposer’s prior use and promotion of, and registrations for Opposer’s ROCKSTAR Marks, Opposer has rights in Opposer’s ROCKSTAR Marks prior and superior to any alleged rights of Applicant in Applicant’s Mark covered by the Application.

17. The goods and services covered by the Application are identical and/or closely related to goods bearing and services offered in connection with Opposer’s ROCKSTAR Marks.

18. The use of ROCK STAR as the dominant element in Applicant’s Mark is closely and confusingly similar to the dominant “Rockstar” element of Opposer’s ROCKSTAR Marks.

19. Applicant’s Mark so resembles Opposer’s ROCKSTAR Marks as to be likely, when used in connection with Applicant’s Goods and Services, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant’s Goods and Services have their origin with Opposer and/or that such goods and services are approved,

endorsed or sponsored by Opposer or associated in some way with Opposer. Opposer would therefore be injured by the granting to Applicant of a certificate of registration for Applicant's Mark.

20. Opposer's ROCKSTAR Marks are distinctive and famous and enjoyed such fame well prior to May 29, 2013, the filing date of the Application. Opposer would be further injured by the granting of a certificate of registration for Applicant's Mark, because such mark is likely to dilute the distinctive quality of Opposer's Marks and impair the distinctiveness of Opposer's ROCKSTAR Marks.

21. Opposer would be further injured by the granting of a certificate of registration for Applicant's Mark in connection with the services applied-for in class 41 of the Application since Applicant's Mark is merely descriptive of such services in class 41.

WHEREFORE, Opposer respectfully requests that this Opposition be sustained and that the registration of the mark ROCK STAR POKER be refused.

Dated: December 1, 2014
New York, New York

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CERTIFICATE OF SERVICE

I, Ilaria Maggioni, am an attorney at Kelley Drye & Warren LLP, attorneys for Opposer Take-Two Interactive Software, Inc., and hereby affirm under the penalties of perjury, that on December 1, 2014, I caused a true and correct copy of the foregoing Notice of Opposition to be served via first class mail, postage prepaid, upon the Applicant's Attorney of Record:

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/Ilaria Maggioni/
Ilaria Maggioni